IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 177 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD. RATIKANT PARSHOTTAM MEHTA

Versus

SHAH NATVARLAL MATHURDAS

Appearance:

1. Civil Revision Application No. 177 of 2001

MR YN RAVANI for the Petitioner

MR BAIJU JOSHI for Respondent No. 1

RULE SERVED for Respondent No. 2-6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/2002

ORAL JUDGEMENT

This Revision Application preferred under Section

115 CPC arises from the order dated 31st January, 2001 made by the learned Joint District Judge, Bhavnagar below Ex.22 in Civil Misc. Application No.119/2000.

The respondent no.1 herein, the landlord, had filed Regular Civil Suit No.413/1987 in the Court of Civil Judge (S.D.), Bhavnagar for eviction of the tenant one Ratikant Mehta from the suit premises. Pending the said suit, the said defendant Ratikant Mehta died on 13th September, 1998. On the death of the said Ratikant Mehta, under order made on 13th October, 1998 below Application Ex.55, the heirs and legal representatives of the said Ratikant Mehta i.e the present petitioner and the respondents nos.2 to 6 were brought on the record as party defendants. However, it appears that the said defendants did not participate in the proceedings thereafter. The suit for eviction was decreed by the learned trial Judge on 7th May, 1999.

Feeling aggrieved, on 7th August, 2000, the petitioner (one of the legal representatives of the deceased tenant) preferred appeal in the Court of District Judge, Bhavnagar. The said appeal was delayed by 14 months. The petitioner, therefore, filed the above referred Civil Misc. Application No.119/200 for extension of period of limitation under Section 5 of the Indian Limitation Act, 1963.

It was the case of the petitioner that the plaintiff had personally met the petitioner and had informed the petitioner that the plaintiff would withdraw the suit and that the petitioner need not attend the Court. Hence, the petitioner did not attend the Court. It was on 31st July, 2000 that for the first time the plaintiff informed the petitioner about the decree passed on 7th May, 1999. The petitioner, therefore, enquired about the suit and preferred the appeal on 7th August, 2000. Thus, according to the petitioner the petitioner was prevented from attending the Court and from preferring the appeal on account of misrepresentation made by the plaintiff. In support of this application, the petitioner also filed affidavit of one Bhupendra Ishwarlal Thakkar to show that the aforesaid talk between the plaintiff and the petitioner took place in presence of the said Bhupendra Ishwarlal Thakkar.

The application was heard by the learned Joint District Judge, Bhavnagar. The learned Judge, under the impugned judgment and order dated 31st January, 2001, did not believe the ground for delay pleaded by the petitioner nor the affidavit of the said Bhupendra

Thakkar. The learned Judge, therefore, rejected the application. Feeling aggrieved, the petitioner has preferred the present Revision Application.

Mr.Ravani has submitted that the Court below has erred in not believing the plea of the petitioner. He has submitted that pending the trial a compromise was proposed by the plaintiff and therefore the plaintiff had informed the petitioner that the plaintiff would be withdrawing the suit. Thus, the petitioner was prevented from attending the Court and to prefer appeal by misrepresentation made by the plaintiff. The petitioner should not be made to suffer injustice on account of the fault of the plaintiff. Mr.Ravani has also submitted that the Court below ought to have taken a pragmatic view of the matter and have condoned the delay. He has submitted that by preferring the appeal late the petitioner has not gained any advantage. If the delay were condoned no prejudice would have been caused to the plaintiff. He has further submitted that on merits the judgment of the trial Court is ex facie bad and illegal. Such wrong judgment ought not to be permitted to operate on a technical ground of delay. The petitioner has a statutory right to appeal, which need not be thwarted on such technical ground. In support of his contention, Mr.Ravani has relied upon the judgment of the Hon'ble Supreme Court in the matter of COLLECTOR, LAND ACQUISITION, ANANTNAG AND ANR. V/S. MST.KATIJI AND ORS. [A.I.R. 1987 S.C. 1353].

In the above matter, the Hon'ble Supreme Court has held that "the power to condone delay has been conferred under Section 5 of the Indian Limitation Act, 1963 in order to enable the Courts to do substantial justice to parties by disposing of the matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts." The Court has proceeded to give reasons nos.1 to 6 why the Court should adopt a liberal approach while considering the applications for condonation of delay.

While exercising the revisional jurisdiction under Section 115 CPC, I am required to examine whether the Court below has erred in not exercising the jurisdiction vested in it. In the present case no such jurisdictional error can be said to have been committed.

Even a liberal approach would not induce me to

take a view different from the one taken by the Court below. I am of the view that in the present case the petitioner has failed to make out any cause for delay much less a sufficient cause. The submission that a compromise was suggested by the plaintiff and in course of such proposal the plaintiff had informed the petitioner that the plaintiff would withdraw the suit is clearly an after-thought. In the Application No.119/2000, the petitioner has not referred to any compromise allegedly suggested by the plaintiff. I am in agreement with the Court below that the ground for delay stated by the petitioner is not genuine and that the same had been sought to be supported by a false affidavit made by one Bhupendra Thakkar. It may be noted that one more attempt has been made by the petitioner to succeed by producing the objections of respondents nos.2 to 6 to this Civil Revision Application, which, in fact, are intended to support the Revision Application. The respondents nos.2 to 6 though were impleaded as the legal representatives of the deceased defendant had not participated in the suit nor did they prefer appeal against the decree for eviction. However, in the present Revision Application they have tried to support the petitioner by saying that they had not received any notice of the Court. It may be noted that the Court below has specifically recorded that notice of Application Ex.55 was given to all the heirs and legal representatives and was duly served upon them.

Hence, in my view, the case pleaded by the petitioner is not believable and the plea has rightly been rejected by the Court below. The liberal approach which the Hon'ble Supreme Court has professed is required to be employed in a fit case and not in a case based on false plea.

The Revision Application is dismissed. Rule is discharged.

(Ms. R.M. Doshit, J.)

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